IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 22980 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

HONOURABLE MS.JUSTICE H.N.DEVANI Sd/-

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

CHEVRROLET DYES INTERMEDIATES & AGROCHEM INDUSTRIES - Petitioner(s)

Versus

UNION OF INDIA & 2 - Respondent(s)

==========

Appearance :

MR PR NANAVATI for Petitioner(s) : 1,
MR JITENDRA MALKAN for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 2,
MRS VASAVDATTA BHATT for Respondent(s) : 3,
MR MM TIRMIZI for Respondent(s) : 3,

==========

CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MS.JUSTICE H.N.DEVANI
Date : 21/01/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE D.A.MEHTA)

1 This petition primarily challenges order dated 29.9.2004 (Annexure-K) by respondent No.2. Mr.P.R.Nanavati, learned Advocate appearing on behalf of the petitioner has made elaborate submissions, including submissions on merits of the matter. The principal grievance of the petitioner is that Show Cause Notice dated 15-17/09/2004 (Annexure-I) was issued calling upon the petitioner to appear before respondent No.2 on 27/09/2004, but the petitioner could not remain present, nor was in a position to file reply, as the petitioner had been detained under COFEPOSA at the relevant point of time and was released only on 10/12/2004 because of an order made by this High Court. In these circumstances,

it is submitted that the cancellation of the DEPB licences mentioned in Annexure-A to the impugned order is bad in law.

2 Mr.Malkan appears for respondent No.2 and Mrs.Vasavdatta Bhatt for respondent Nos.1 & 3. The pleadings are complete and the controversy lies in a very narrow compass. Hence, the matter is taken up for final hearing and disposal today.

3 Rule. Learned Counsel for the respondents respectively waive service.

4 In the impugned order it is mentioned in paragraph No.4 that the noticee firm did not reply to the said Show Cause Notice nor appeared for personal hearing and even failed to refute the charges levelled against it in the Show Cause Notice. However, in the affidavit-in-reply filed by respondent No.2 in paragraph No.8 the following averments are made :

"8.The DEPB has been cancelled only after issuing show cause notices. Of course, show cause notices issued to the petitioner have been received back with the postal endorsement as 'not found'. However, the petitioner has never cared to inquire with the office of the Respondent No.2 though his DEPB was suspended on 29.09.2004. Under the circumstances the DEPB has been rightly cancelled pursuant to the investigation report of the DRI".

5 In light of the aforesaid averments it is apparent that respondent No.2 also agrees to the fact that the petitioner has not been heard before passing the impugned order. It is not necessary to take into consideration as to which side is at fault. Respondent No.2 has stated that the petitioner ought to have taken care to inquire with the office of respondent No.2, but it can be said for the otherside that the respondent authority ought to have taken care, in the first instance, to ensure that the notice of hearing i.e. Show Cause Notice had duly been served on the petitioner. Issuance of

a show cause notice is not an idle formality. Nor can mere issuance of notice be equated with service. A show cause notice as the description indicates, is for showing cause as to why the proposed action should not be taken, i.e. to elicit a response. In absence of service there can be no response/reply. No hearing.

6 In the circumstances, on the basis of the admitted facts the petition has to be allowed on the short ground of violation of principles of natural justice, the impugned order having been made without hearing the petitioner.

7 Accordingly, impugned order dated 29/09/2004 (Annexure-K) is quashed and set aside and the parties are directed to proceed from the stage of Show Cause Notice dated 15-17/09/2004 (Annexure-I). The petitioner is directed to appear before respondent No.2 authority on 3/2/2006 and thereafter the matter shall be

proceeded with on a day which is convenient to both the sides.

8 Considering the period that has elapsed, it would be fair and just, in the event the petitioner ultimately succeeds, to direct respondent No.2-authority to validate the DEPB licence for the balance period from the date the petitioner was deprived of the use. It is necessary to make it explicit that the Court has restrained itself from entering into the merits of the dispute despite submissions made on merits by the learned Counsel for the parties.

9 The petition is allowed to the aforesaid extent. Rule made absolute. There shall be no order as to costs.

Sd/- Sd/-
(D.A.MEHTA,J) (H.N.DEVANI,J)

m.m.bhatt